IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.MC.No. 3129 of 2007()

C.M.P.NO.4092/07 IN DRI/CRU/06/07 FILEDBY ADDL.C.J.M E.O ERNAKULAM CRIME NO.260/07 OF DIRECTOR OF REVENUE INTELLIGENCE AND NALLALAM POLICE STATION

PETITIONER:

N.P. THAHIR, AGED 38 YEARS,
S/O. LATE K.P. USMAN, " PALLATHIL HOUSE",
UMMENCHERI (POST), KANNUR DISTRICT.

BY ADV. SRI.C.KHALID

RESPONDENTS:

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1. SENIOR INTELLIGENCE OFFICER,
DIRECTOR OF REVENUE INTELLIGENCE, THALI,
CHALAPURAM, CALICUT-2.

2. COMMISSIONER OF CUSTOMS, CALICUT.

3. THE COLLECTOR OF CUSTOMS, COCHIN.

4. CIRCLE INSPECTOR OF POLICE,
CRIME BRANCH, KOZHIKODE.

5. STATION HOUSE OFFICER,
NELLALAM POLICE STATION, NELLALAM.

6. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3129 of 2007

Dated this the 19th day of October 2007

O R D E R

The petitioner claims to be the owner of a Maruti Wagon R bearing No.KL 13M 2675. His brother, one Thafsal was given permission to use the said car. The said Thafsal had taken the said car to the Calicut Airport to receive a person who was coming from his place of employment in the gulf countries. That person came to the airport on 19/6/2007. It is alleged that the said person had illegally imported into India counterfiet currency notes. Car of the petitioner was allegedly used by the petitioner's brother to convey the person who brought the currency notes. The car was seized by the custom officials. The petitioner applied for return of the vehicle. By Annexure A4 order, the learned Additional Chief Judicial Magistrate, Economic Offences, Ernakulam rejected the prayer for return of the vehicle. The petitioner claims to be aggrieved by the order. He has hence come to this court with a prayer that the vehicle may be directed to be released to him.

2. Notice was given to the respondents. The learned Standing Counsel for the Director, Revenue Intelligence has appeared on behalf of the respondents. It is submitted that on merits, respondents have no serious objection against the vehicle being released to the petitioner, the owner of the car subject to appropriate

conditions. However, the learned Standing Counsel for the Director, Revenue Intelligence brings it to the notice of the court that the petitioner has an effective right of revision against the impugned order, he, being not a party to the proceedings and in these circumstances it is not strictly necessary to invoke the powers under Section 482 Cr.P.C.

3. The objection taken appears to be perfectly justified. So far as a person who is not a party to the proceedings, the rejection of the claim for release of the vehicle under Section 451 Cr.P.C cannot be held to be an interlocutory order as to attract the bar under Section 397(2) Cr.P.C.

4. But the learned counsel for the petitioner submits that the said objection may not be accepted as sufficient to drive this petitioner to take back this Criminal Miscellaneous Case and again come to the High Court with a petition for revision. Be that as it may, I am satisfied that notwithstanding the technical objection rightly raised by the learned counsel for the respondent, this court can proceed to pass appropriate directions in the interests of justice and to avoid any further unnecessary delay in the disposal of the claim on merits. If not under Section 482 Cr.P.C, this court does certainly have powers under Section 401 Cr.P.C to pass appropriate orders considering the challenge against the impugned order.

5. This petition is in these circumstances allowed. The challenge against the impugned order is sustained. There shall be a direction that the vehicle shall be released to the petitioner on the following terms and conditions:

i) He shall produce before the learned Magistrate all documents to satisfy the learned Magistrate that he is the owner in possession of the vehicle.

ii) He shall execute a bond for an amount equal to the value of the vehicle, as may be determined by the learned Magistrate, in his discretion.

iii) The petitioner shall, in such bond, undertake to produce the vehicle before the learned Magistrate or any other authority as may be stipulated by the learned Magistrate or as directed by competent officials of the Customs Department in the same condition in which the vehicle was handed over to him, as and when directed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007